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SUBJECT: UNCAC WORKING GROUP MEETINGS: REVIEWING IMPLEMENTATION
AND PROMOTING TECHNICAL ASSISTANCE

SUMMARY

11. SUMMARY: The UN Office on Drugs and Crime (UNODC) hosted two intergovernmental expert working group meetings during the week of December 15 to promote implementation of the UN Convention against Corruption (UNCAC). During the meeting of the Review of Implementation Working Group on December 15-17, experts from over 70 countries began negotiating various options for designing a new mechanism to review implementation of UNCAC. Major differences remain between some G-77 (China, Egypt, Iran, Pakistan, and Cuba) and non-G-77 (UK, Norway, France, Netherlands) countries on key principles that will shape the mechanism, including the sources and confidentiality of information that will be considered during the review process, the form and nature of the group that will review implementation reports, and whether reviews will include site visits of experts to the country under review. While the U.S. vision for the mechanism appears a potential middle-ground for compromise, the U.S. and Japan seem isolated on our insistence that the new mechanism must be funded entirely with voluntary contributions. Delegates will meet informally prior to the next formal meeting of the working group in May 2009 and attempt to resolve these several key contentious issues.

12. SUMMARY CONTINUED: During the meeting of the Technical Assistance Working Group on December 18-19, experts from over 60 countries met to refine ideas on how technical assistance can best support implementation of UNCAC. The constructive discussion resulted in recommendations to enhance technical assistance coordination at the in-country level, though the nature of that coordination is still not fully agreed, and to conduct future expert-based seminars to identify the challenges of implementing certain UNCAC commitments. Delegates also endorsed a UNODC proposal to create a pool of experts who are knowledgeable about the UNCAC and can be used by UNODC and other technical assistance providers to help respond to requests for help in implementing UNCAC. END SUMMARY

DESIGNING A NEW UNCAC REVIEW MECHANISM

13. The UNCAC Review of Implementation Working Group met in Vienna on December 15-17, 2008, to pursue its mandate, given by the 2nd UNCAC Conference of States Parties (COSP) in January, to develop terms of reference for a new mechanism to review implementation among States Parties. The ultimate goal is to finalize terms of reference that can be approved by the 3rd COSP, scheduled to be held in Doha in early November 2009. The U.S. delegation, led by John Brandolino, Senior INL Advisor to the U.S. Mission to UN Agencies in Vienna (UNVIE), consisted of representatives of State/INL and the U.S. Office of Government Ethics.

14. Delegates from over 60 countries began negotiations using a text created by the UNODC secretariat. The text, created after informal consultations held in November and based upon written proposals submitted during the summer by 33 countries, contains multiple options for designing a new UNCAC review mechanism. Options range

from requiring each country to conduct a modest self-assessment to implementing a robust peer review model which would involve expert site visits to each country under review. Negotiations progressed slowly. At the end of three days, delegates had discussed only 20 of approximately 50 paragraphs.

FUNDAMENTAL DIFFERENCES REMAIN

¶15. Several areas of contention emerged during the negotiations. These include: (1) defining the nature and composition of the body that will undertake the reviews; (2) identifying the sources of information that can be used by the body and whether such information, including any resulting individual country review reports, will be kept confidential; and (3) determining whether reviews must include site visits of reviewing experts to reviewed countries. Positions remained firm, with some outspoken G-77 delegations (China, Egypt, Cuba, Iran, and Pakistan) supporting a very modest and potentially ineffective vision of a review process that would involve reviewing only information provided by the government under review, lead to individual country reports that could not be made public, and forbid any site visits of experts to countries under review. In contrast, several outspoken non-G-77 delegations (UK, Netherlands, Norway, France) advocated for a review process that would include a formal role for civil society, require expert site visits to each country under review, and result in individual country implementation reports that would be automatically made available to the public.

¶16. The U.S. vision for a new mechanism, which anticipates peer review but also some degree of country ownership over individual review reports, remains reflected in the resulting text and

represents a potential middle ground for compromise. However, given the stark differences that emerged between some G-77 and non-G-77 countries, several supporters of a more robust process, including the U.S., met in the margins to begin defining any common redlines for establishing a credible review process worth our time and effort.

¶17. While delegates did not reach agreement on a text discussing the issue of how the mechanism should be funded, meetings on the margins revealed that the U.S. and Japan are isolated in their insistence that the mechanism should be funded entirely by voluntary contributions. Even natural allies on this issue (UK, Australia) appear ready to accept UN regular budget funding for this process, seeing anticorruption and UNCAC as important enough for an exception to their usual call for UN budget discipline. U.S. delegates presented arguments on the margins as to why regular budget funding is inappropriate, but delegations continued to reiterate their desire for consistent, stable and non-earmarked funding.

¶18. The Review of Implementation Working Group will meet again in May 2009 to continue negotiations on the text. As proposed by the U.S. to the UNODC secretariat, there will likely be an additional round of informal consultations in Vienna prior to May to try to resolve specifically the several key areas of contention.

ENHANCING TECHNICAL ASSISTANCE

¶19. The UNCAC Technical Assistance Working Group met in Vienna on December 18-19, 2008, to pursue its mandate to determine needs and priorities for technical assistance to support implementation of the convention. The U.S. delegation, led by John Brandolino, Senior INL Advisor to UNVIE, consisted of representatives of State/INL and the U.S. Agency for International Development.

¶10. Prior to the meeting, the UNODC secretariat provided an analysis of technical assistance needs identified by the 68 respondent countries to the UNCAC self-assessment checklist. The analysis showed a need for assistance in legislative drafting and with help in implementing several articles found in the criminalization, prevention and asset recovery chapters. UNODC proposed several methods to facilitate addressing these needs. These included developing a country-specific matrix that would

facilitate the matching of technical assistance supply and demand, and establishing a roster of experts administered by UNODC who would possess some expertise on UNCAC and who could be used by UNODC and other technical assistance providers to promote implementation of UNCAC. The OECD Development Assistance Committee's GovNet also tabled a conference room paper on steps the donor community can take to foster good practices in assistance related to implementation of UNCAC, such as mainstreaming UNCAC into development assistance and promoting country-level processes to define needs and coordinate among donors and with host-country counterparts.

¶11. Following two days of constructive deliberations, delegates from over 60 countries eventually endorsed a number of the ideas proposed by UNODC and the donors. Participants supported creation of a roster of experts, although the U.S. insisted successfully that UNODC prepare a formal project proposal outlining the details of how they intend to administer such a roster and also indicating any needs for voluntary funding. Donor efforts to ensure that coordination of UNCAC implementation assistance is integrated into existing donor-host country dialogue mechanisms was met with resistance from some countries (Egypt, Iran, China) who seek to portray UNCAC assistance as separate from other development assistance. Nonetheless, delegates endorsed the need to enhance in-country coordination, which opens the door to a U.S. proposal on the margins for donors to test in-country coordination in several countries and report on their results to the next working group meeting scheduled for September 2009. Donor representatives, both during the meeting and on the margins, declared their commitment to mainstream UNCAC into their anticorruption operations, noting the need for UNCAC to frame their work in this area.

ASSET RECOVERY ON THE MARGINS

¶12. While the issue of asset recovery was not on any formal agenda, the U.S. delegation capitalized on opportunities to advance U.S. interests on that issue. Several countries informally reiterated their support for an informal expert discussion process launched by the U.S. at the September working group meetings to identify areas for strengthening implementation of UNCAC's international asset recovery framework. The U.S., now joined by Peru, circulated earlier in the month a summary of those September discussions and potential next steps to continue the dialogue among asset recovery experts from over 20 key countries. To support the process, Switzerland hosted a dinner meeting on December 16 that brought key G-77 representatives (Egypt, China, Brazil, Indonesia, Peru) together

with representatives of financial center and other countries (Switzerland, U.S., Canada, France, Russia) to discuss common concerns and the possibility of closer coordination in the development of ideas for the 3rd COSP.

¶13. The cordial conversation built legitimacy for the idea of a continued expert dialogue-- parallel and not supplanting the COSP process on practical asset recovery tools and recommendations, including the idea of developing a network of expert focal points. To maintain momentum, State/INL will follow up in January on the next steps identified in the summary of the September discussions. Switzerland communicated to us their willingness to help facilitate the dialogue by hosting a 1 to 2 day meeting prior to the May Asset Recovery Working Groups.

COMMENT

¶14. Despite constructive dialogue and the virtual disappearance of bloc politics in the negotiations for a new UNCAC review mechanism, delegations must resolve several key issues before finalizing terms of reference for a new mechanism. These unresolved issues revolve around a very fundamental determination of whether the review process will be entirely intergovernmental in nature or whether information or participation from civil society is needed to enhance the process and make it credible. We may need to approach several G-77 delegations in capitals to engage them further and assure them that a mechanism following the lines of the U.S. vision would be a constructive one. We also hope to persuade countries that an

effective review process will help facilitate the provision of technical assistance by providing more detailed information on country and regional technical assistance needs, as well as identifying general challenges to implementing UNCAC. In the meantime, we will be alert to opportunities for projecting the constructive atmosphere of these UNCAC negotiations into other areas of our work in Vienna.

¶15. USDEL has cleared this cable.

PYATT